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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

REPLY BRIEF OF PAUL KNAUER, PETITIONER

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Reply will be made to the Arguments of the Solicitor General in the order in which they are made in his brief. But first a few general observations.

Summary of Arguments

The arguments of petitioner in reply to those of the Solicitor General crystalize into these formulas.

I

Only a solemn admission of record is competent to overthrow a judgment of naturalization where the charge pertains only to subjective matters of intention and mental reservations; for, the possibility that the judgment may be right, cannot be reduced to a certainty that it is wrong by any less evidence than an admission.

II

An oath of allegiance is an oral act that operates regardless of any mental reservations, because the oath itself negatives mental reservations, and is an act that the applicant cannot recall. The oath itself can never be challenged by either party. If the court has jurisdiction to administer the oath the applicant becomes a citizen *instanter*, and all future acts are those of a citizen; and the government cannot be heard to challenge the judgment awarding citizenship, because of acts done after admission to citizenship.

Naturalization cases are tried judicially and can be overturned only upon proof of extrinsic fraud; *where* the Government has consented to the application, or made no objection to its grant, the government must show that its consent, or its negative action, was induced or obtained by some active fraudulent conduct on the part of the applicant; otherwise *res adjudicata* is the complete answer.

III

The question of attachment to the principles of the Constitution is one of fact and its decision is submitted by Congress to the State and District Courts for judicial decision; and a judgment of naturalization have the attributes of stability of all judgments and cannot be overthrown except upon evidence rising to the dignity of a solemn admission of record.

IV

There are no conditions attached to the enjoyment of naturalized citizenship and what is done after admission is granted, is done pursuant to the charter of his rights—the certificate of the naturalization court; and no change of war allies, of administration, nor the advent of a war

psychology, can disturb him; for his oath of allegiance is to the Constitution.

V

Congress has not declared that a bund member may not be naturalized and such membership is not inconsistent with an attachment to our Constitution and our form of government in our country; and granting freedom of speech to such a naturalized person creates no danger to our institutions. Freedom of speech is the balance wheel that preserves equilibrium in government.

I

A judgment of naturalization entered in a State Court is res adjudicata of matters submitted to it for its adjudication and only a solemn admission of record is competent to overturn it.

The Solicitor General contends in his Point I that petitioner in swearing in his petition for naturalization that he intended to renounce fealty to the German Reich and that in 1937, when he took his oath of unqualified allegiance to this country, he committed conscious and deliberate fraud.

The reply is that it is fundamental law that courts will not give a repeat performance and try the same issue twice. Every lawyer knows that if he seeks to overthrow an adjudicated issue he must allege some new matter that is sufficient, if established, to make a different basis for adjudication than that which underlies the issue attacked.

It must be shown that the new facts alleged were not known, and could not reasonably have been anticipated, from the existence of the known facts. And where fraud is asserted it must be alleged that such fraud precluded an opportunity to learn the facts and thus have a fair trial of the issues.

Nothing is shown here in the complaint except the conclusion of the pleader that there was a false oath. Whether that oath was false depended on the facts that were proven before the Judge that tried the question of fact in the State Court. The finding and judgment of the trial court upon those facts are therefore conclusive as between the parties.

The answer shows that the Naturalization Service made a full investigation of the facts before the application was heard. The government made no effort to show that it did not have every fact in 1937 that it presented here in 1943. Nor did it show any concealment of any fact. The presumption is, of course, that all facts existing at the time of the hearing in 1937 were presented to the court and adjudicated upon.

Under those conditions the judgment admitting petitioner to citizenship must stand as entered, and standing as entered petitioner became a citizen and as a citizen he was privileged to do all things said to have been done after he became a citizen. They did not disqualify him to be a citizen.

The *Baumgartner* case was stronger on the facts than the case at bar. Baumgartner talked to his diary and put down his otherwise secret thoughts. In this case it shows Knauer was trying to protect German citizens from unwarranted attack. He was protesting unfavorable actions, he was sending charity; not for the Nazis, but for people.

The motive that impelled Knauer's actions was protection and aid to German-American citizens who suffered much in that area.

Only a Solemn Admission Will Overturn a Judgment Which is Res Adjudicata

It is obvious that a judgment which has become final and *res adjudicata* on the issues between the parties cannot be

overthrown except by a solemn admission by the party who may be charged to have obtained it by fraud. And even then a court would want some corroboration of such an admission in a citizenship case. If there be one theory on which the judgment may be sustained it should be adopted. Any possibility that it may be right should protect it.

A Judgment Awarding Citizenship Either Creates a Citizen or It Does Not

A judgment either creates a citizen or it does not. Like an electrical current it is either off or on. The judgment here is fair upon its face and every element of jurisdiction is present. It completely bound petitioner to all duties and obligations of citizenship; only the government could avail itself of any supposed fraud petitioner could not. It is optioned with the government to attack a judgment in such cases; which means that, at most, the judgment was only voidable, i.e., valid until set aside. Being voidable only under such a condition all acts done thereafter were those of a citizen and privileged except as against any possible violation of law, and all prior acts are merged in the judgment.

The question of *res adjudicata* in such a case so decided in a State Court, is definitely passed on in *U. S. v. Ness*, 245 U. S. 319, 325-326.

The question of *res adjudicata* as applied in this case is illustrated in Sections II and III hereof.

II

There can be no fraud in an oath of allegiance for the reason that its character is such that it operates to change the status from alien to citizen. It is an oral act that operates regardless of mental reservations which are negatived in the prescribed oath

The validity of an oath of allegiance depends upon jurisdiction to administer it. It has the character of an act and is in fact an oral act. It has the effect of stepping across the border line from one sovereignty into the adopted country.

A renunciation of allegiance to a foreign sovereignty is not mere words, but an *act* that transfers sovereignty. Even if there were mental reservations, although there can be none, it is the *act itself* that transfers allegiance and the next moment the naturalized citizen is subject to every obligation of the native born. A thousand oaths could give it no greater legal effect. However, the oath was taken as required and mental reservations are negatived in the oath. There are, and can be, no mental reservations in an oath of allegiance. The congressional form provides against it. The nature of an oath is such that one taking it can have no mental reservation. The government wrote it that way and the courts take it as is.

The Oath of Allegiance is to Support the Constitution and Laws of the United States

The oath of allegiance is a renouncement of present allegiance to another sovereignty and a declaration of an unreserved support and defense of our constitution and laws as against all enemies. The oath is the evidence of the transfer of allegiance from the old to the new. This

oral act, this thing—the oath—the Congress has required as an objective and enduring proof of the new allegiance. Without it there can be no naturalization; with it citizenship begins. It cannot be fraudulent for it is a tie that binds one to the other. It is an act, an oral act.

The oath is the final and conclusive proof of the transfer of allegiance, and the person making it will never be heard to say that he entertained any mental reservations, for, embodied in the oath is the statement that it is made without mental reservations, or purpose of evasion.

It is the government that exacts the oath. Its execution ends the proceeding. Citizenship flows therefrom, both *de facto* and *de jure*.

It is the facts of the case, as adjudicated by the State court, that entitled the applicant to admission to citizenship. The oath is the demonstrable fact, that finally, when all antecedent conditions exist, transfers allegiance and it then becomes a muniment of title to citizenship.

The oath engages the new citizen to defend the Constitution in the future against all enemies foreign and domestic. There is not a word of evidence in this record that tends to show that Knauer in any wise failed in that respect. The evidence shows that he relied upon the guarantees of the Constitution and contended for them. What he is shown to have done, he had the freedom to do. Germany was not then our enemy. Knauer was doing nothing against our country, its constitution or its laws.

Naturalization Cases Are Tried Judicially

When Congress submitted the procedure of naturalizing aliens to the judicial department it made those matters subject to judicial practices, methods and procedure, and the judgments of the courts in such cases have the stability

and sanctity of all judicial pronouncements. Things decided and issues adjudicated are to remain decided.

If there is lacking a jurisdictional element in a naturalization proceeding a certificate of naturalization obtained therein is "illegally procured" and is subject to be set aside as a void proceeding, on motion, by appeal, or complaint in equity.

If there is fraud of the character that prevents the government from having an opportunity to properly conduct its portion of the proceedings, or make a proper showing, or defense, then there is jurisdiction in equity to void the judgment by which the certificate of naturalization is granted.

But the matter is judicial with the usual characteristics—the right of appeal for the correction of all errors relating to trial and procedure, and the right to void the judgment on direct attack for lack of jurisdiction or the existence of such fraud as vitiates jurisdiction.

But the Congress gave no jurisdiction to treat a complaint in equity as a writ of error or to undo things which have passed into the realm of *res adjudicata*. This principle is recognized by this Court.

We have referred the court to the case of *U. S.* v. *Ness*, 245 U. S. 319, in which it is stated that the decision of the State Court upon the testimony of witnesses, competency, weight of evidence, and credibility of witnesses, is binding and conclusive, though clearly erroneous, if the government took part in the proceeding—and here it is admitted that it did so take part.

But the Solicitor General relies upon the case of *Luria* v. *U. S.*, 231 U. S. 9, which he says forecloses petitioner's viewpoint. Not at all—it confirms it. The proceeding to cancel a certificate of naturalization because of abandonment of residence is based upon the original validity of the naturali-

zation proceeding—the certificate is cancelled upon a condition subsequent—the abandonment of the United States as a permanent residence. The option is with the government to so contend; it may hold the party to his oath of allegiance and exercise dominion over him wherever it can, but the party cannot voluntarily throw off his citizenship. The government may allege and show that a naturalized citizen has abandoned his residence here and get a decree cancelling the certificate and thereby excuse itself from further obligation to him; but the citizen has no such option, for the law does not so state.

And the fact that Congress picked out that one condition, to litigate a question of intention, is an exclusion of others. But, as said, the judgment proceeds upon the theory of a change of mind and an abandonment of what was once, or could honestly have been, an intention to remain permanently here.

Of course the absent party may show his absence to be only temporary, which shows the original validity of the proceeding. The *prima facie* rule is a legal fiction or basis of an issue of fact as to an abandonment of the United States as a permanent residence, and is intended to shift the burden to the defendant who best knows the facts.

As to Res Adjudicata

The Solicitor General has stated that petitioner's position is that fraud is *res adjudicata* when it is put in issue and litigated. That of course would be true; but petitioner is not saying that he is defending fraud; nor is he admitting there was any fraud in the original issues. The government is the one alleging fraud and we say there is none; but, if there were anything of that nature bound up in the evidence, it was decided against the Government in the trial court; i. e., the judgment speaks that there was none.

Intrinsic or Extrinsic Fraud

The Solicitor General says there is no distinction to be noted between intrinsic and extrinsic fraud so as to have any relevance here and that all types of fraud may be reached in a proceeding to cancel a certificate of naturalization. In that he is mistaken—only one type of fraud is relieved from in equity, as stated in *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, and that is what is called "extrinsic fraud."

He cites as authority for his claim the case of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 328. But when that case is examined it is seen to be a perfect type of extrinsic fraud. There the Hartford Company so built up its case through the medium of propaganda that the patent office was misled and the Circuit Court of Appeals was so over-impressed by the manufactured sidelight that it based its judgment upon it. Try as it could the Hazel-Atlas Co. never could ferret out the fraud. Years later, 15 years later, the practiced deception came to light in another case and the fraud was *admitted* by the Hartford Co. Though years had passed this Court overthrew the wrong, and truth long crushed proclaimed itself anew. *Hazel-Atlas Co.* v. *Hartford Co.* is the perfect example of an extrinsic fraud. And so is *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, cited in petitioner's original brief.

Whether Called Intrinsic or Extrinsic Fraud, to Be Relieved from It, It Must Have Prevented a Full and Fair Defense.

Chief Justice Taft in *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, 421, said this about intrinsic and extrinsic fraud:

> "There has been much discussion as to whether extrinsic fraud is here alleged, and the case of United

> States vs. Throckmorton, 98 U. S. 61 is cited and numerous other authorities since that case. We do not find ourselves obliged to enter upon a consideration of the sometimes nice distinctions made between intrinsic and extrinsic frauds in the application of the rule, because in any case to justify setting aside a decree for fraud whether extrinsic or intrinsic, it must appear that the fraud charged really prevented the party complaining from making a full and fair defense. If it does not so appear, then proof of the ultimate fact, to wit, that the decree was obtained by fraud, fails."

And in *Hazel-Atlas Co. v. Hartford Co.*, 322 U. S. 238, 244; Mr. Justice Black states the rule as to stability of judgments as follows:

> "This equity rule, which was firmly established in English practice long before the foundation of our republic, the courts have developed and fashioned to fulfil a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule. Out of deference to the deep rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. U. S. vs. Throckmorton 98 U. S. 61."

"Intrinsic Fraud" Is Not Fraud From Which Equity Will Relieve

Applying here the rule as stated by Chief Justice Taft *Toledo S. Co. v. Comp. Scale Co.*, in effect decides, that that which is spoken of as "intrinsic fraud" or perjured statements made in the trial of the case, is not fraud in the legal sense, but is the incident or hazard of all lawsuits; and, therefore, the only fraud is extrinsic fraud, and that that type of fraud is something done which has "really prevented the party complaining from making a full and fair defense" (P. 421).

Applying here the rule as stated by Chief Justice Taft it precludes the action of the government in this case for the reason that the government is not claiming that it was deprived of an opportunity of making a full and fair defense to the proceeding for naturalization. No claim is made that it was in any wise hindered in its preparation, or deceived as to the facts, whereas the record speaks cooperation by petitioner and a complete and independent investigation by the government made in preparation for the hearing. The real claim made by the Solicitor General is that a lot of things have happened since the naturalization trial which, he now conceives, point to a *possibility* that Knauer took his oath of allegiance in 1937 with mental reservations. What has happened is, a war with Germany came on, and viewpoints changed, and war psychology became intolerant of other's views. Racketeering in government condensed the whole horror of war into the words "Nazi" and "fascist" and to smear one with those words was to create an atmosphere of war guilt about him. It is not the form of government that any country uses that condemns, it is the abuse of it, and the racketeering in it, that is the fault. And in this case the assumption of the lower courts was, and of the Solicitor General here is, that war guilt is upon petitioner, when, in fact, the war came two and a half years after petitioner was naturalized. This case was tried once in 1937 when there was no war and petitioner was admitted to citizenship. The government found no fault then, but a trial of the same issue in an era of actual war has put a different complexion on the evidence, caused by the advent of war.

Looking into the briefs and arguments of the many cases heard by this Court where prior adjudications with the fraud element present were involved in the issues, it is seen that, while this Court has examined each case upon its

merits, it has applied the rule contended for by petitioner though sometimes wtihout definitely stating it—preferring, obviously, not to classify fraud unless necessary to the decision. But the rule does have it place in judicial procedure and often guides the way to a correct decision.

III

That portion of the application for citizenship in the prescribed form which states that plaintiff is attached to the principles of the Constitution, is an allegation proven and disposed of in the State court trial, and is res adjudicata between the parties

If the doctrine of stability of judgments is to be adhered to in the administration of justice then the proposition of the Solicitor General that he can single out an issue in a naturalization proceeding and relitigate it can have no force here. He argues that the allegation in the application for citizenship that states that petitioner was attached to the principles of the Constitution was consciously false. That allegation is part of the pleading in the application for citizenship and is an issue which the trial judge of the State Court had to decide upon the evidence offered by petitioner and his witnesses and upon the investigation and recommendation of the Naturalization Service, and evidence of the government, if any.

The point was directly passed upon in disposing of an argument in *U. S. v. Ness*, 245 U. S. 319, 325-326, where Mr. Justice Brandeis said:

> "Opposition to the granting of a petition for naturalization may prevail because of objections to the competency or weight of the evidence, or credibility of witnesses or mere irregularities in procedure. A decision on such minor questions, at least of a state court of naturalization, is, though clearly erroneous,

conclusive even against the United States if it entered an appearance under Section 11."

What Justice Brandeis was disposing of there was a contention that a judgment without jurisdiction over the subject matter (certificate of entry absent) was *res adjudicata*, and he was saying that where a State Court has jurisdiction its action upon the evidence is binding as a thing decided between the parties, but where there was absence of jurisdiction there could be no *res adjudicata*.

The principle was also recognized by the court in another naturalization case. This court denied a certiorari writ to the government which sought a review of the case of *United States v. Sakharam G. Pandit*, 15 Fed. 2d 285. There a trial court had admitted to citizenship a high-class Hindu of the Brahma Caste and of full Indian blood, born in India, who applied for citizenship, claiming he was a "free white person." The application was contested and the trial court heard extended arguments and finally admitted Pandit to citizenship on May 17, 1914. No appeal was taken. On June 23, 1923 the government filed a petition to cancel the certificate as illegally procured. *Res adjudicata* was pleaded; the District Court sustained the plea. The Circuit Court of Appeals affirmed on the ground that in the trial of the issue of fact as to whether Pandit was a free white person the trial court had made an error within jurisdiction and that the doctrine of *res adjudicata* applied. This court denied certiorari (273 U. S. 759). And that was at a date subsequent to the action of this court in denying a right of citizenship to a high-caste Hindu in the case of *United States v. Thind*, 261 U. S. 204.

And so it is to be observed that this court has spoken when necessary to a decision upon the question of *res adjudicata* in naturalization cases, showing they are not in a class by themselves but that the principle of stability of

judgments applies to them as in other cases. If there were to be any differentiation it would seem that the rule would be tightened instead of loosened, as citizenship in this nation is esteemed one of the highest privileges.

But, aside from the fact that the judgment admitting petitioner to citizenship is the highest and most conclusive proof and expression of petitioner's attachment to the principles of our constitution, the government presented no direct evidence to show that Knauer was not attached to the constitution. The only evidence produced was some 1400 pages of condemnation of the Bund and then, having condemned it only to the extent that the trial judge found that, while its teachings "were contrary to the principles of the constitution of the United States," yet, "the fact that a person is a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant judgment of cancellation of a decree of naturalization" (Tr. 27). But Knauer never was a member of the Bund.

The Question of Attachment to the Constitution Was One of Fact for the State Court to Decide

It is admitted by the Solicitor General, as indeed he must admit, that the question of whether petitioner was attached to the principles of the constitution was a frictional question in the naturalization proceeding in the State Court. The Naturalization Service investigated petitioner's background, his character, his beliefs in, and his knowledge of, the constitution, and petitioner and his required witnesses gave evidence thereof; and upon that record and evidence the State Court passed its judgment that petitioner was qualified and thereupon admitted him to citizenship.

Of what purpose is all that proceeding if it may be overturned as matter of course? Has it come to pass that a solemn judgment of court has deteriorated to the point

where it is only *prima facie* correct and subject to be contradicted by oral evidence?

The historical background of the naturalization law recited by the Solicitor General cannot change the fact that Congress delegated to the judicial department the matter of judicially determining the question of attachment to the principles of the constitution, and that means according to the usages and procedure of the Courts; and the doctrine of *res adjudicata* and stability of judgments is a foundation stone of that judicial structure.

The principles of the constitution in which an applicant is to believe, are not specified by Congress and are left to the judiciary to expound or determine. Everyone knows generally what those principles are, but they are variously expressed according to the viewpoint of the individual. Generally speaking they are sovereignty in the people, and delegation of powers by the people to their government, and limitation of those powers; three independent departments, legislative, executive and judicial, the reservation of inviolable rights and freedoms, and the right to representation.

Whether petitioner was attached to the principles of the constitution during the period of his probation was essentially a question of fact for the State Court to decide upon the testimony of the petitioner and his supporting witnesses. It is not claimed that anything was hidden from the Naturalization Service or the trial judge; hence it must be assumed that there was a full and fair hearing upon the issues. Here the court was satisfied with the record and judicially so determined. All the elements of *res adjudicata* are present; the trial was as of April 13, 1937, and subsequent events could not alter the judgment entered on that date. The march of time does not change legal principles but it does change viewpoints.

Opposing counsel in the zeal of his eloquence says that petitioner "bitterly opposed the circulation of any matter critical of Nazi Germany"—referring to finding 33 Tr. 31. The reference there is to the acts of a person at a convention passing out pamphlets of another organization from another city, acting out of turn. There was nothing bitter about it. It was proper under the circumstances. (Witness Segnitz, Knauer trial, page 497.)

It is also said that petitioner sought to introduce the swastika flag into the affairs of the Federation of German American Societies. It is to be remembered that some German societies wanted to keep the emblem of the old republic and some wanted to change to the new. There was much agitation over the matter. It was largely political and was debated among members and societies. It had no other significance than organization politics at that time. Out of the conflict the German American Citizens Alliance grew with which petitioner was later identified and in which he became an officer. It was all a matter of public knowledge and the government's agents, and examiners no doubt had full knowledge of the facts. They did, if they did their duty, and that may be assumed.

It is said by the Solicitor General that Knauer enrolled his daughter in the "bund youth movement." The statement distorts the facts. One of the defendants proved that the youth movement in question was organized by one Prause who had been a boy scout in Germany and had no connection with the bund; that he saw children at the summer camp with no organized entertainment and that he proceeded to organize the boys and girls and built up the youth movement, independent of any organization, along scout lines. The boys had their organization and the girls theirs. It developed into quite an organization, and from all that is said of it, it was a credit to the community. There

was nothing urged as wrong about it, except that it was German and was said to be subject to the influence of propaganda. It was a clean, healthy, wholesome organization developed along scout lines (Witness Prouse Record 1271). All this was known at the time. But that was not wartime. The thought of different eras changes.

But, after it is all said, the State Court was delegated by Congress to settle the question of mental qualifications, intentions, attachments and conduct, and that court tried those questions out and settled them to its satisfaction and that of the Naturalization Service at the time, and by all rules they should remain settled as adjudicated.

IV

Congress Has Attached No Conditions to the Full Enjoyment of Naturalized Citizenship

Once a certificate of citizenship has been granted to one having all the qualifications precedent therefor he need not be looking over his shoulder nor worry over his past. His adopted country will protect him from his prior sovereign. He may lack some basic qualifications for office but the common heritage of freedom is his. He may go about his affairs for a lifetime without being questioned by any official as to his right to go and come. He may lose his citizenship by a condition subsequent as in *Lauria* v. *U. S.*, 231 U. S. 9, but not by any attack upon the validity of the proceeding by which he was admitted to citizenship.

It is essential to the enjoyment of an acquired citizenship that the new-born citizen may be assured that the judgment admitting him will not be overthrown for whim or caprice. Change of war allies, or of administration, or the advent of war psychology, should not disturb him for his oath of allegiance is not to those vested with fleeting authority and

temporary power, nor the government itself, but only to the constitution.

The interesting collection of historical facts concerning the limitations upon acquired citizenship prepared by the Solicitor General in his *point IV, however, is not persuasive* that there are any conditions attached to one's admission to citizenship so far as the judgment admitting him is concerned. The limitations mentioned pertain to the enjoyment of citizenship once it has been granted. His citizenship as an *existing status* is secure. He may not be president, but after all, few of us ever are—and on that he is not far from equality with one hundred forty million others. There exists no power to denaturalize. Void judgments and judgments procured by fraud may be vacated, but those are void *ab initio*.

A validly naturalized citizen may not be disturbed as to his status after he has passed into the common fold.

V

Freedom of Thought and Expression is the Balance Wheel of the Constitution

The accomplished Solicitor General suggests that freedom of thought does not require that the constitution guarantee its own self-destruction, which, of course as stated, is beyond dispute. But that philosophy finds no home here. It is a wishful thought, the reflection of a regret that Congress has not disqualified a bund member or a Nazi from citizenship, for even conclusive proof of such a membership does not now require that citizenship be denied. The District Court so held.

Freedom of speech need not be feared; it holds no threat—except to tyranny. It is a balance wheel in government that is forever striving for equilibrium. Stifle it and democracy will drift into a dictatorship, as history shows.

It was one thing to look upon Nazi socialism as a theory of government as of 1937 and quite another to look upon Nazi war horrors as of 1943. It was one thing for a German to look with pride upon the social gains of the German government up to 1937, and applaud, and quite different to appraise that government in 1943, after a few years of racketeering in social philosophy, plunder, destruction, and starvation.

The essence of the argument in point V of the Solicitor General's brief is that no Germans of the passing generation should be admitted to citizenship here else they will be racketeering in freedom; and, while shouting praise of the Constitution, will be strangling its principles and precepts in every crossroad hamlet in the country.

It is to treat the Nazi philosophy as if it were as deeply rooted as a religion, as indelible as a complexion, as if it were in fact a type of political enthusiasm that dyed the blood, coursed the veins, fanatically intending to consume all democracy and rule the world; and that every German is inoculated with the virus. Of course, Alexander conquered the world, but his followers, where are they? Or Caesar's, Cromwell's, Napoleon's, or the followers of any historic personality? They blend in the haze of history and disappear. And so the followers of Hitler soon will be a memory. We had it in our own country. There were the "yankees" and the "rebs," the "carpet baggers," and "copperheads," to use the war words of that day, but today they live under, protect, and defend the same constitution. Time cures ills. Hatred dies out with the current generation.

But Congress has not said that a bund member or a Nazi shall not be a citizen. Congress prescribes the qualifications.

As long as we can talk back at the ideas we hate we will be safe. Who is to decide, after all, whose ideas are the

most hateful, if there is no freedom to talk hate? To hate seems to be one of our characteristics.

The answer to the question raised by the Solicitor General seems to be that it is a legislative one and that until Congress has spoken as it has in other instances, the remedy is greater care in the Nationality Service rather than seeking to undo what was generally accepted as correct practice prior to the war. It was correct then, it is only thought to be incorrect now.

As long as our attachment is to constitutions and laws, rather than meteoric personalities that rise in each century to be worshiped, and hated as well, we are safe as a nation.

Tardily, and happily so, the cases of one era trying another reach this court for correction and a restraining hand—for one generation will assume to punish the usages of the other. In vain did the judges of Charles I, when arraigned under Charles II, plead their Parliamentary Commission as authority for their judgment that their king be beheaded. They were smeared as "regicides" and ordered executed for adjudging death without jurisdiction.

The blessing is that this court sits far removed from local strife and can form a disinterested judgment upon the human passion of the day.

Conclusion

A judgment of naturalization, in the absence of extrinsic fraud, is *res adjudicata* of all matters submitted to a State Court for adjudication and only a solemn admission is competent to overturn it. There being no such proof in this case the judgment of the Circuit Court of Appeals and the decree of the District Court should be reversed.

Respectfully submitted,

Ode L. Rankin,
Attorney for Petitioner.